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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,616	10/14/2003	Joyce Fernandez		1835

7590
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05/02/2007

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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05/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/683,616

Applicant(s)

FERNANDEZ, JOYCE

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 5, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites that the piece of fabric is "of a width throughout its length to cover completely a child's buttocks and support the child comfortably..." This limitation renders the width of the fabric unclear and indefinite because children's buttocks can be of any number of varying sizes and cannot be definitively defined as a whole. The clarity of this limitation becomes important, for example, when trying to determine which of Hathaway or Cummings et al. disclose a sling with such a width.

Claim 6 recites the limitation "the middle of the sling" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. The sling can be considered to have two middles, depending on which axis or dimension you are viewing the sling from and it is therefore unclear which middle Applicant is intended the limitations of the claim to encompass. The clarity of this limitation becomes important, for example, when trying to distinguish Applicant's channel at the "lengthwise middle" of the sling from a channel like that of Powell which Examiner feels is also shown at a "lengthwise middle" of the sling.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-7, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Powell (US 5,950,887 A).

Regarding claim 1, Powell discloses a child's support including a mounted-by-the-supporter sling of an elongated piece of fabric (col. 4 line 43) of a width throughout its length and having a channel (3) between its ends for passing a branch of the sling there through. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and supports the child comfortably (see Figure 1). There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 5, the sling of Powell includes a pocket (col. 5 line 38). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the

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pocket being used to store child-care things. There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 6, the channel (3) of Powell is near a lengthwise middle of the sling and extends cross-wise of the sling. The remaining limitations of the claim have already been shown to be unpatentable over Powell as applied to claims 1 and 5 above.

Regarding claim 7, the sling of Powell has all of the claimed features as set forth above. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the sling being looped over a user's head such that the channel is in a lengthwise middle of a would-be-carrier's back. There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 15, the sling of Powell has all of the claimed features as set forth above. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the sling being draped over a user's shoulder in such a way that the channel would be on top of the user's shoulder. There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111). See Figure 1 of Powell.

Regarding claim 16, Figure 1 of Powell shows a first branch of the sling being passed across the front of the carrier and around and up the back of the carrier and

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through the channel on the shoulder of the carrier, effectively satisfying the limitations of the claim.

5. Claims 1, 5, 6, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hathaway (US 4,139,131 A).

Regarding claim 1, Hathaway discloses a child's support including a mounted-by-the-supporter sling of an elongated piece of fabric (col. 2 line 15) of a width throughout its length and having a channel (40) between its ends for passing a branch of the sling there through. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and supports the child comfortably (70, Figure 1). There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 5, the sling of Hathaway includes a pocket (col. 4 line 20). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used in the intended manner, i.e., the pocket being used to store child-care things. There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 6, the channel (40) of Hathaway is near a lengthwise middle of the sling and extends cross-wise of the sling. The remaining limitations of the claim

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have already been shown to be unpatentable over Hathaway as applied to claims 1 and 5 above.

Regarding claim 15, the sling of Hathaway has all of the claimed features as set forth above. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and shoulders and supports the child comfortably and the sling being draped over a user's shoulder in such a way that the channel would be on top of the user's shoulder when the sling is draped there over. There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 16, Figure 1 of Hathaway shows a first branch of the sling being passed across the front of the carrier and around and up the back of the carrier and through the channel on the shoulder of the carrier, effectively satisfying the limitations of the claim.

Regarding claim 17, the other branch of Hathaway is shown in Figure 1 to pass around the back and to and across the front of the carrier and up to and through the channel and tied in a knot with the first branch.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5, 6, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway as applied in paragraph 5 above in view of Cummings et al. (US 6,595,396 B2).

Hathaway discloses the claimed sling, however, it can be argued that the width of the sling along its entire length is not of sufficient width to cover completely a child's buttocks and shoulders. Cummings et al., however, also discloses a child sling similar to the sling of Hathaway in that both sling have a central portion (16 and 22, respectively) from which two branches project (12/14 and 70, respectively). The branches (12/14) of the Cummings et al. sling are noticeably wider than those (70) of Hathaway. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the branches of the Hathaway sling wider, as taught by Cummings et al., as wider straps would spread the pressure applied to the user's shoulder over a greater width or area and make the sling more comfortable for the user to wear. Narrower straps would be more likely to press harshly into a user's shoulders, possibly causing uncomfortable indentations in the user's shoulders or leaving marks.

8. Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway as applied in paragraph 5 above or Hathaway in view of Cummings et al. as applied in paragraph 7 above, either in view of Cordisco (US 5,071,047 A).

Regarding claims 7-10, the original Hathaway sling and the modified Hathaway sling each include the claimed structural features as set forth in paragraphs 5 and 7 above, but neither include the sling being worn on a carrier's back.

Cordisco, however, also discloses a child sling, and teaches that while the sling is mounted on the front of a carrier (Figure 11), the same sling can also be worn on the same carrier's back (Figure 12) without having to modify the structure of the sling. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wear either of the original Hathaway sling or the modified Hathaway sling not only on their front side, but also their backside, as taught by Cordisco, in order to support the child in a different manner, perhaps more comfortable to the carrier.

Regarding claims 11 and 12, the knot of either Hathaway sling is capable of being loosely tied or tightly tied, as any knot can be, effectively satisfying the limitations of the claim. The claim is part of a series of product claims that claim the structure of a child sling after it has been mounted on a user. The manner in which the knot is formed does not take away from or define over the fact that in the end, a knot is formed in either of the Hathaway slings.

Regarding claims 13 and 14, the pocket (37) of either Hathaway sling is in a branch of the sling that would not be directly entangled in a knot formed therein, and is thus considered by Examiner to be beyond the knot, effectively satisfying the limitations of the claim. Regarding the pocket being used to hold child-care things, the initial statement of intended use and all other functional implications of the pocket have been carefully considered but are deemed not to impose any patentably distinguishing

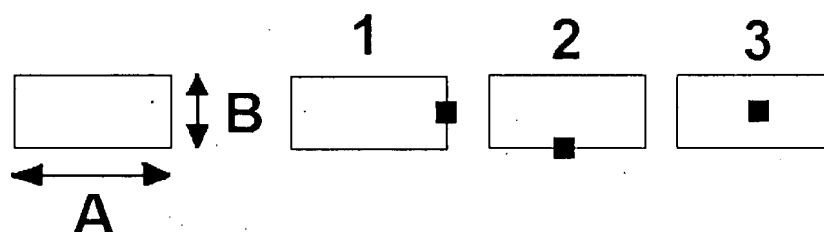
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structure over the pockets of either Hathaway sling which are capable of being used in the intended manner, i.e., to hold child-care things. There is no structure in either Hathaway sling pocket that would prohibit such functional intended use (see MPEP 2111).

Response to Arguments

9. Applicant's arguments filed 3/26/07 have been fully considered but they are not persuasive.

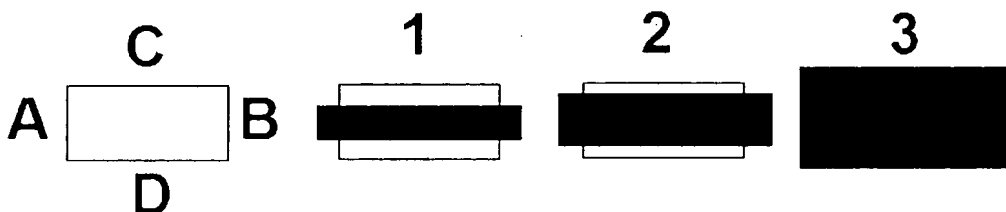
Applicant has challenged that Powell discloses "a channel (3) between its ends for passing a branch of the sling there through." Applicant has asserted that Powell discloses two rings (3) at the end of his sling. Examiner agrees that the rings of Powell can be considered to be at the end of this sling, however, Examiner is also of the position that the rings can be considered to be at a lengthwise middle of the sling. The boxes below help illustrate this position. The leftmost box is shown to have two lengthwise dimensions, A, and B. Figure 1 shows a black box at the lengthwise middle of dimension B. Figure 2 shows a black box at the lengthwise middle of dimension A. Figure 3 shows a black box at the lengthwise middle of both dimensions A and B. Examiner is associating the channel of Powell with Figure 1.



Applicant has again asserted that Hathaway's sling is not of a width throughout its length to cover completely a child's buttocks and shoulders. Examiner directs

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Applicant's attention to Figures 1 and 2 of Hathaway. Examiner is of the position that these Figures clearly show the sling (portion 70) extending completely over/under or covering completely the buttocks of the child being held therein. The width of this portion (70) is found throughout the length of the sling as seen in Figure 3. Furthermore, because children's buttocks can be any number of sizes, it follows that any number of slings can be considered to have widths that would cover some child's buttocks. To simply state that Hathaway does not disclose such a width is to say that there is no child anywhere in the world with a bottom that could be covered by the sling branches of Hathaway. Finally, the boxes below help illustrate Examiner's position that the sling branches of Hathaway are of a width to cover a child's buttocks. The leftmost box is shown to have four sides, A, B, C, and D. Figure 1 shows a box with a black strip covering the box completely in a direction from side A to side B, and partially in a direction from side C to side D. Figure 2 shows a box with a black strip covering the box completely in a direction from side A to side B, the strip covering more of the box in a direction from side C to side C than did the strip of Figure 1. Figure 3 shows a box covered by a black strip in both directions from side A to side B and from side C to side D. Examiner is associating the sling branches of Hathaway with the black strip of Figure 1, while Applicant is intending the limitations of the claims to explicitly define a width such as that of the black strip in Figure 3.



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Applicant has asserted that Examiner failed to point out the structural limitation regarding the width of the fabric with respect to Hathaway. As set forth in paragraph 5 above: 1.) "...Hathaway discloses a child's support including a mounted-by-the-supporter sling of an elongated piece of fabric (col. 2 line 15) of a width throughout its length..." and 2.) "The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and supports the child comfortably (70, Figure 1). There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111)."

With respect to the rejection under 35 U.S.C. 102 with Hathaway, Applicant has asserted that "modifying Hathaway's strap 70 in light of applicant's teaching is particularly improper when doing so requires exclusion of 'other essential parts.'" and that "modifying Hathaway's strap with a pocket to store child-care thing would seem inconsistent..." Examiner emphasizes the fact that Hathaway has been applied under 35 U.S.C. 102 and that there is no modification being made to Hathaway as such. The rejection as set forth in paragraph 5 above includes no modifications of Hathaway. Rather, the rejection links preexisting structural features of Hathaway to those structural features claimed.

Applicant has asserted that Hathaway's channel 40 does not extend cross-wise of his sling, but rather lengthwise. Examiner is of the position that a lengthwise

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dimension can also be considered a cross-wise dimension. Looking at Figure 3 of Hathaway, the pocket (37) can clearly be considered to extend cross-wise of the sling.

Applicant has asserted that claims 16 and 17 set forth limitations not found in Hathaway. As set forth in the previous office action, "Claim 15 recites specific structure of a child sling, namely that comprises a piece of fabric, has a certain width, and has a channel. The claim further states that the channel will be "on top of the would-be-carrier's shoulder when the sling is draped there over." Examiner places emphasis on "would-be-carrier" and "when". "Would-be-carrier" is evidence that the claim is not reciting structure to a sling already on a person. Also, "when" implies at a time when the sling is draped over a user's shoulder, if it were to happen. A user could certainly drape the sling of Hathaway over their shoulder in such a manner that the channel of the sling lay on top of their shoulder. Even if in this position the sling is not ideally situated for holding a child, although Examiner does not concede the fact that it isn't, the language of the claims as currently presented is still satisfied." Based on this position, it follows that the limitations of claims 16 and 17 are also satisfied.

Applicant has agreed that wider straps would spread the pressure applied to the user's shoulder over a greater width or area to make the sling more comfortable for the user to wear. Examiner therefore fails to understand which part of the combination involving making the straps of Hathaway wider, as taught by Cummings et al., Applicant is arguing. Again, to simply state that neither Hathaway nor Cummings et al. disclose such a width is to say that there is no child anywhere in the world with a bottom that could be covered by the sling branches of Hathaway or Cummings et al.

Applicant has challenged whether the knot of either Hathaway sling is capable of being loosely tied or tightly tied, or that any knot can be tied as such, but has presented no arguments as to how such a tying is not allowed by any knot. Examiner maintains the position that any knot, including that of Hathaway, can be tied loosely or tightly. Applicant notes a button 72 and buttonholes 76 in the sling of Hathaway. Examiner notes that these are for optional use, as disclosed by Hathaway (col. 4 lines 63-65), and that a user can still loosely tie the sling branches in a knot without using the button/button holes.

Applicant has agreed that, "The manner in which the knot is formed does not take away from or define over the fact that in the end, a knot is formed in either of the Hathaway slings". Applicant then asserts that the claimed invention has a loose knot when in an intermediate state, an intermediate state that is not found in the prior art. Examiner is of the position that such an intermediate state is recited only functionally in the claims and that the knot of the Hathaway sling is perfectly capable of being tied loosely in an intermediate state and then tied tightly.

Applicant has asserted that Examiner somehow reconstructed the pocket of Hathaway in light of the Applicant's teaching of the pocket being beyond the knot. As set forth above, "Regarding claims 13 and 14, the pocket (37) of either Hathaway sling is in a branch of the sling that would not be directly entangled in a knot formed therein, and is thus considered by Examiner to be beyond the knot, effectively satisfying the limitations of the claim." Nowhere has Hathaway been reconstructed or has the pocket been moved.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

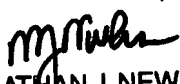
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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JML
4/27/07


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER